SUPREME COURT OF THE UNITED STATES.

No. 326.

YELLOW BEAVER ET AL., REPRESENTING THE WEA INDIANS RESIDING IN KANSAS, PLAINTIFFS IN ERROR,

VS.

THE BOARD OF COMMISSIONERS OF THE COUNTY OF MIAMI, STATE OF KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

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1 Pleas before the honorable supreme court of the State of Kansas, at a special term thereof, held at the supreme court-room in the city of Topeka, in said State, commencing at 10 o'clock a. m., the 18th day of July, A. D. 1865, when were present Hon. Robert Crozier, chief justice, Hon. L. D. Bailey and Hon. Jacob Safford, associate justices, and Andrew Stark, clerk.

Be it remembered, that heretofore, to wit. on the 22d day of July, A. D. 1865, there was filed in the clerk's office of the supreme court of Kansas the petition in error, with a transcript from the record of the district court of the fourth judicial district, sitting in Johnson county, Kansas, attached thereto, and made a part of said petition, and also a waiver of summons and stipulation of defendants in error to appear in said supreme court, which said petition in error and waiver of summons are in words and figures following, to wit: and indorsed "Yellow Beaver *et. al.*, plaintiffs in error, *vs.* The Board of Commissioners of Miami county, def't's. Petition in error. Transcript and waiver of service. Filed July 22, A. D. 1865. Andrew Stark, clerk."

2 State of Kansas, supreme court.

Petition in error.

YELLOW BEAVER *et al.*, plaintiffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Miami county, defendants.

The said Yellow Beaver and others complain of the board of county commissioners of Miami county, Thomas Akers, treasurer, and Daniel Childs, clerk of said county, deft's, for that the said defendants, at the June term of the district court in and for said county of Miami, in the year A. D. 1865, recovered a judgment and decree by the consideration of said court against said plaintiffs in a certain action then and there pending in said court, wherein the above-named pl't'ffs were pl't'ffs and the above-named defendants were def'ts, a copy of the record of the judgment and proceedings in which case, duly certified, is hereunto attached, marked "A," and made a part of this petition. And the above-named plaintiffs aver that there is error in the record and proceedings in this, to wit:

1st. That the court erred in overruling the motion of the said plaintiffs for a new trial, and in permitting the judgment and decree of said court to stand.

2. That the said court erred in refusing the said pl'ffs a new trial in said case.

3. That the said judgment was for the said def'ts when it
3 should have been for the said pl'ffs, according to the law and evidence in the case.

4. The said plaintiffs therefore prays that the said judgment and decree be reversed, and the said plaintiffs restored to all things they have lost by reason thereof.

WILSON SHANNON,
Attorney for Pl'ffs.

I agree to appear for the above-named def'ts, and waive the issuing and service of process. Given under my hand this 22d of July, 1865.

S. O. THACHER,
Att'y for Def't's in Error.

THE COUNTY OF MIAMI AND STATE OF KANSAS, *ss:*

Pleas before the Hon. D. M. Valentine, judge of the fourth judicial district of said State, at a district court sitting within and for said county, at the June special term thereof, A. D. 1865, begun and held at the court-house in Paola, in said county, on and from the 26th day of June, A. D. 1865.

Be it remembered, that heretofore, to wit, on the 2d day of May, 1864, Yellow Beaver, Tom Rodgers, Yakona, or Mitchell, Peter Cloud, and Frank Valley, for themselves, and representing the Wea Indians,
of Miami county, Kansas, in their individual and tribal rela-
4 tions, filed in the clerk's office of said court their certain petition for an injunction against the board of county commissioners of the county of Miami, Thomas Akers, treasurer of said county, and Daniel Childs, clerk of said county of Miami, in the State of Kansas, to restrain the said def'ts from assessing and collecting taxes upon the land of said Indians, or selling said land for the same, which said petition is in words and figures following, to wit:

Petition for injunction.

District court of Miami County.

YELLOW BEAVER, TOM RODGERS, YAKONA, OR Mitchell, Peter Cloud, and Frank Valley, for themselves and representatives, the Wea Indians, of Miami county, Kansas, in the individual and tribal relations, pl'ffs,

vs.

THE BOARD OF COUNTY COMMISSIONERS of Miami co., Thomas Akers, treasurer, and Daniel Childs, clerk of said county, def'ts.

5 The plaintiffs say, 1st. That they are the chiefs and headmen of the Wea Indians, resident of Miami county, State of Kansas; that they bring their action as well for themselves in their individual capacity as well as for each and every member of said tribe of Wea Indians, who are too numerous to appear in court; that

they represent the identical tribe of Indians with whom the United States made a treaty on the 30th day of May, 1854, signed by Geo. W. Mannypenny, commissioner in behalf of the United States, and Kio-Kaw-mo-yan and others, in behalf of the Indians, approved by the President Aug. 10th, 1854.

2d. That by virtue of said treaty, certain lands, hereafter described, was set apart, and the title was vested and (become) confirmed in the plaintiffs, and the several members of the said tribe of Wea in their individual capacity; that by said treaty they held said lands "subject" to such restrictions respecting lands and alienations as the President or Congress of the United States may present; that Congress has made no provision for the alienation of such lands other than to allow the Secretary of the Interior to impose such guards and restrictions as he may see proper to
6 impose for the sale of such lands; that by such restrictions it requires the assent of the President of the United States to all sales of lands made by said Indians.

3d. That the said pl'ffs nor the members of the Wea Indians, nor none of them, are vested with the rights of the elective franchise, but on the contrary are prohibited from all voice or influence in the election of county, State, or national officers; that the tribal relations of the said Wea Indians are still maintained, with whom Congress are holding intercourse as a separate and distinct people.

4th. That the board of county commissioners of Miami county, Kansas, the defendants aforesaid, for the year 1863, caused to be levied on the lands of the plaintiffs, so as above acquired and held, and the lands of the other members of the Wea tribe of Indians, taxes for State and county purposes; that under their direction the said Thomas Akers, one of the defendants, has advertised the lands of the plaintiffs, and the lands of the other members of the said tribe of Indians, to be sold on the first Tuesday in May. 1864, to pay the State and county taxes so as aforesaid levied.

7 5th. These defendants aver that these said lands so advertised to be sold, and the lands of the other members of said tribe of Indians are not subject to taxes by virtue of their relation to the government of the United States, and by virtue of their maintaining their tribal relations, and by virtue of not being citizens of the United States, and deprived of the elective franchise, and because their lands are not subject to alienation or sale without their own consent formally and legally expressed, and with the consent of the President of the United States.

6th. That great and irreparable injury will result to these pl'ffs by the sale of these lands thus advertised, as well the property of these pl'ffs, as the property of the other members of the tribe.

7th. That the printed slips hereto attached and marked "A," contains the names of the several Indians and a description of the property advertised to be sold.

8th. The pl'ffs for themselves and for each member of said tribe of Weas whose lands are taxed and advertised for sale pray for an injunction to be issued against the defendants, and each of them,

against the board of county commissioners, restraining them
8 from levying any tax upon any of said lands, and from all other acts and things towards the collection thereof, and against the said Thomas Akers, treasurer of said Miami county, restraining and prohibiting him from selling said tracts of lands, and each part and parcel of the same, for non-payment of the taxes levied thereon for the year 1863, as set forth in their advertisement, slips of which are hereto attached and marked "A," as aforesaid, either on the first Tuesday in May, 1864, or on any other day; and that the said treasurer shall wholly refrain in manner aforesaid until the further order of this court in the premises, and against the said Daniel Childs, county clerk, restraining him from executing, issuing, or delivering any tax deed, certificate, or otherwise, of any of the said tracts of land.

9th. And the plaintiffs pray for themselves and others as aforesaid, that on the final hearing of this action the said order of injunction be made final and perpetual, and that the said district court decree that the assessment and levy of said tax of 1863 are, and shall be, utterly null and void; and the plaintiffs pray for such other relief as equity and good conscience may require.

G. W. BROWN & JOHN M. COE,
Att'ys for Plaintiffs.

9 STATE OF KANSAS, *County of Miami, ss:*

Frank Valley being duly sworn, on oath, says, that he is one of the plaintiffs in the foregoing suit; that he is personally acquainted with the matters alleged in said petition, and that the same are true.

his
FRANK + VALLEY.
mark.

Subscribed and sworn before me this 2d day of May, 1864.
T. J. BANNISTER, *Clerk.*

10 *New Indian lands, Wea township.*

B. Peoria and McCoy	SW. qr	25 16 24	160	
Same	E. hf. SE. qr	26 16 24	80	
Same	NE. NE. qr	35 16 24	40	
Same	NW. NW	36 16 24	40	19 35
Paw-saw-kaw-maw-saw		30 16 25	160	
Same	W. hf. NW	30 16 25	80	
Same	E. hf. SE	25 16 24	80	19 49
Wa-pon-que-qua	W. hf. SW	14 16 24	80	
Same	S. hf. SW	14 16 24	80	
Same	SW. SE. qr	15 16 24	40	
Same	SE. SW. qr	15 16 24	40	
Same	SW. qr	15 16 24	40	
Same	SE. SE. qr	16 16 24	40	
Same	SW. SE. qr	16 16 24	40	
Same	NE. qr	16 16 24	100	
Same	W. hf. NW	22 16 24	80	
Same	NE. NW. qr	22 16 24	40	
Same	NW. SW. qr	22 16 24	40	
Same	NW. NE. qr	22 16 24	40	

New Indian lands, Wea township.—Continued.

Wa-pon-que-qua	NE. NE. qr	22	16	24	40	36 31
T. Barnard	E. hf. SW	20	16	24	80	4 88
Me-shin-qua-me-saw	SE	32	16	24	160	
Same	NE. qr	32	16	24	160	
Same	W. hf. SE. qr	20	16	24	80	
Same	E. hf. NW	32	16	24	80	
Same	E. hf. SW. qr	32	16	24	80	34 18
H. Barnard	NE. NE. qr	28	16	24	40	
Same	W. hf. NE	28	16	24	80	
Same	NW. qr	28	16	24	160	
Same	NE. qr	29	16	24	160	
Same	SE. NW. qr	29	16	24	40	29 30
Red Bird	SW. qr	36	16	24	160	
Same	E. hf. SE. qr	35	16	24	80	
Same	SE. NE. qr	35	16	24	40	
Same	SW. NW. qr	36	16	24	40	19 53
Wah-soh-ko-loh	NW. qr	35	16	24	160	
Same	SW. qr	35	16	24	160	
Same	W. hf. S. qr	35	16	24	80	
Same	W. hf. NE. qr	35	16	24	80	
Same	SE. qr	34	16	24	160	39 07
Sho-cum-gua	SE. qr	21	16	24	160	
Same	E. hf. SW. qr	21	16	24	80	
Same	SW. SW. qr	21	16	24	40	
Markum-seh, jr	SW. SW	22	16	24	40	19 33
Same	NW. qr	25	16	24	160	
Same	W. hf. NE	25	16	24	80	
Same	SE. qr	25	16	24	160	
Same	NE. qr	36	16	24	160	
Charles Baptiste	E. hf. NW	36	16	24	80	37 07
Same	W. hf. NE	83	16	24	80	
Same	E. hf. NW	83	16	24	80	
Same	NW. qr	4	16	24	160	
Same	W. hf. NE. qr	4	16	24	80	
[illegible]on White	W. hf. SW. qr	4	16	24	80	29 30
Same	E. hf. SW. qr	33	16	24	80	
Same	W. hf. SE. qr	33	16	24	80	9 76
11 No-mun-go qua	W. hf. NW	33	16	24	80	
Same	W. hf. SW	33	16	24	80	9 76
John Charley	NW. qr	34	16	24	160	19 53
Same	SW. qr	34	16	24	160	
Jim Charley	NW. qr	3	17	24	160	9 76
Charles Simes	E. hf. SE	33	16	24	80	
Same	E. hf. NE. qr	33	16	24	80	9 76
B. Peoria	SW. qr	3	17	24	160	
Same	E. hf. SE. qr	4	17	24	80	
Same	E. hf. NE. qr	4	17	24	80	19 53
Na-ma-qua-wa	W. hf. SE. qr	28	16	24	80	
Same	SW. qr	28	16	24	160	
Same	E. hf SE. qr	29	16	24	80	
E. H. Black	Pt. NW qr	13	16	24	107	
Same	Pt. NE qr	13	16	24	94	
Same	NE. NW. qr	18	16	24	40	
Same	NE. NW. qr	18	16	24	40	
Same	S. hf. NW. qr	18	16	24	80	
Same	NW. SW. qr	13	16	24	40	26 95
John Wesley Meddle	Aunk township	19	17	24	100	
Same	NW. qr	24	17	24	100	19 00
B. Peoria	NE. qr	16	17	24	100	9 50
John Bull	NE. qr	9	17	24	100	
Same	SW. qr	16	17	24	100	
Same	NW. qr	17	17	24	80	

New Indian lands, Wea township.—Continued.

John Bull	S. hf. NE. qr	17 17 24	40	
Same	NE. NW. qr	17 17 24	40	28 15
Chin-qua-keep.	NE. SW. qr	17 17 24	160	
Same	SE. qr	16 17 24	160	
Same	NW. qr	16 17 24	156	
Same	Pt. NE. qr	21 17 24	156	37 35
Creeh	NE. qr	21 17 24	156	9 50
Yah-yah-nok-qua	NW. qr	11 17 24	80	
Same	N. hf. NW	11 17 24	80	
Same	N. hf. NE. qr	10 17 24	80	
Same	SE. qr	3 17 24	160	
Same	S. hf. NE. qr	3 17 24	80	
Thomas Hedges	W. hf. SW	2 17 24	80	28 51
Same	SW. qr	7 17 25	160	
Same	SW. NE. qr	7 17 25	40	
Reeselle Shaw	SE. NW. qr	7 17 25	40	15 44
Felix Sarceuia	N. hf. NE. qr	2 17 24	160	9 50
Same	N. hf. NE. qr	7 17 23	80	
Mary A. Peorie	NW. qr	7 17 23	80	9 50
Lucinda Dauthett	N. hf. SW	17 17 25	160	9 50
Same	N. hf. NE	17 17 25	80	
Knowles Dagnett	E. hf. NE. qr	19 17 25	80	9 50
Jones	W. hf. NE	18 17 25	80	9 50
Tecumseh	SE. NW. qr	18 17 25	80	9 50
Same	E. hf. SW. qr	8 17 25	40	
Same	NW. SE. qr	8 17 25	80	
Pelashe	NW. qr	8 17 25	40	9 50
Same	SW. qr	18 17 25	160	19 40
Lewis Peckham	NW	18 17 25	160	
Same	NW. qr	1 17 24	160	
Same	N. hf. SW	12 17 24	80	
Anthony Lott	E. hf. NE	6 17 24	80	23 76
12 Stephen Colt	NW. qr	2 17 24	80	4 75
Yellow Beaver	SE. qr	1 17 24	160	9 40
Same	SW qr	8 17 24	160	
Same	N. hf. NE. qr	8 17 24	160	
Same	NE. NW	17 17 24	80	
Same	W. hf NW	17 17 24	40	
Same	NE. NE. qr	17 17 24	80	
Same	Part SE.	18 17 24	40	
Same	Part NE.	7 17 24	108	
Same	W hf. NW	7 17 24	144	
L. Samal	Part SE	8 17 24	80	52 98
Same	Part NE	7 17 24	52	
Same	SW. qr	7 17 24	16	
Patacati	SE. qr	7 17 24	192	11 18
Dennison Abner	S. hf. SW	5 17 24	160	9 50
Samuel Bulter	SE. SW. qr	5 17 24	80	4 75
Pun-quesh-ne	NE qr	2 17 24	40	2 37
Same	NW. qr	5 17 24	160	
Same	N. hf. SW	5 17 24	160	
Bean Pole	NW. qr	5 17 24	80	22 57
Same	NE SW qr	2 17 24	160	
Same	N. hf. NE qr	2 17 24	40	
Patocah's heirs	Part SE. qr	3 17 24	80	21 54
Pat Meloney	Hf. SE. qr	6 17 24	20	1 58
Kish-con-soh	Part NW	31 17 24	80	4 75
Same	S. N. part	8 17 24	39	
		8 17 24	190	13 00
John Sweeney	Part NW	8 17 24	80	4 75
S. C. Boon	NE. SW. qr	6 17 25	40	
Same	SE. NE. qr	6 17 25	40	4 75

New Indian lands, Wea township.—Continued.

J. J. Garling	Part SE. qr	16	17	24	4	22
J. Barnard	W. hf. NE	22	17	24	80	
Wah-ke-shin-gah	Marysvilletown	16	16	22	40	
Same	SW. SE qr	24	16	22	80	
Same	E. hf. NE qr	18	16	23	40	
Same	SW. SW. qr	18	16	23	40	
Same	SE. SW. qr	18	16	23	40	
Same	SW. SE. qr	18	16	23	40	
Same	SE. SE. qr	17	16	23	40	
Same	SW. SW. qr	17	16	23	40	
Same	SE. SW. qr	19	16	23	80	
Same	W. hf. NE. qr	19	16	23	160	42 90
John Paschal	NW. qr	32	15	23	125	
Same	NE. qr	32	15	23	40	8 92
She-swah-wah	NW. SE. qr	33	16	28	160	
Same	NE. qr	33	16	28	160	
Same	NW. qr	33	16	28	160	
Same	SW. qr	33	16	28	160	
Same	SE. qr	28	16	28	160	
Same	SW. qr	34	16	28	80	
Same	W. hf. NW	34	16	28	80	52 37
She-coh-quoh	W. hf. SW	7	16	28	40	
Same	SW. NW. qr	7	16	28	40	
Same	SE. NW. qr	12	16	22	80	
Same	E SW. qr	13	16	22	160	
Same	NE. qr	13	16	22	40	
Same	NW. SE. qr					
13 Same	SW. SE qr	13	16	22	40	
Same	SW. qr	7	16	23	166	
Same	W. hf. SE. qr	7	16	23	80	
Same	NE. qr	18	16	23	160	
Same	NW. qr	18	16	23	160	
Same	NW. SW. qr	18	16	23	40	
Same	NE SW. qr	18	16	23	40	
Same	NW. SE qr	18	16	23	40	
Same	NE. SE. qr	18	16	23	40	
Same	SW. SW. qr	9	16	23	40	62 55
Lewis Paschal	SW. qr	15	16	23	160	
Same	E. hf SE	16	16	23	80	
Same	SW. NW. qr	15	16	23	40	
Same	SE. NE qr	16	16	23	40	17 29
Geo. Clinton, dec'd	NW. qr	32	15	23	123	
Same	SW. SW qr	32	15	23	40	
Same	E. hf. SW	32	15	23	80	
Same	N. hf. NE	5	16	23	87	18 93
An-shen-we-swa	NW. qr	8	16	23	180	
Same	NE. qr	8	16	23	180	17 39
Meshe-we-lotta	NE. qr	29	16	23	160	
Same	SE. qr	29	16	23	160	
Same	E. hf. SW. qr	29	16	23	80	
Same	E. hf. NW	29	16	23	160	
Same	SE. qr	29	16	23	160	34 58
Reshe-com-soh	NE. qr	31	15	23	148	
Same	SW. SW. qr	32	15	23	40	
Same	SE. qr	31	15	23	160	
Same	NW. qr	5	16	23	160	26 34
Re-o-o-ben	SW. qr	8	16	23	160	
Same	E. hf. SE. qr	8	16	23	80	
Same	NW. qr	17	16	23	160	
Same	NE. SW. qr	17	16	23	40	
Same	NW. SW. qr	17	16	23	40	25 93

New Indian lands, Wea township.—Continued.

An-sop-pen-quoh-yoh	NE	28	16	23	160	
Same	SE. qr	28	16	23	160	
Same	W. hf. NW	27	16	23	80	
Same	W. hf. SW	27	16	23	80	25 93
Patoosh, dec'd	NE. qr	20	16	23	160	
Same	NW. qr	20	16	23	160	
Same	SW. qr	20	16	23	160	
Same	E. hf. NE. qr	19	16	23	80	
Same	E. hf. SE. qr	19	16	23	80	34 58
Entee-se-wa-gua	NW. SE. qr	10	16	23	40	2 14
Keel son-yah	NE. qr	32	16	23	160	
Same	SE. qr	32	16	23	160	
Same	E. hf. SW. qr	32	16	23	80	
Same	E. hf. NW. qr	32	16	23	80	25 93
N. Spears	E. hf. NW. qr	20	16	23	80	4 32
H. Powell	W. hf. NW	19	16	23	80	
Same	N. hf. NW. qr	20	20	23	80	8 64
Captain Marsh	N. hf. SE. qr	15	16	23	80	
Same	E hf NW. qr	15	16	23	80	
Same	NE qr	15	16	23	160	
Same	W. hf NW	14	16	23	180	21 54
14 Saw-saw-hew-gah	NW. qr	14	16	23	160	
Same	SW. qr	2	16	23	160	
Same	NW. qr	2	16	23	160	
Same	W. hf. NW. qr	2	16	23	160	60 98
Same	N. hf. SE. qr	21	16	23	100	
Thansh	Part NE. qr	21	16	23	60	
Same	Part SE. qr	21	16	23	160	
Same	NE qr	10	16	23	160	25 98
Same	SE. qr	12	16	23	160	4 80
Indian Lands	SE. qr	13	16	23	180	4 80
Same	S. hf. NE. qr	13	16	23	180	11 61
Same	SE. qr	13	16	23	180	11 61
Same	SW. qr	14	16	23	180	9 68
Same	NE. qr	14	16	23	180	9 68
Same	NW. qr	14	16	23	180	11 61
Same	SE qr	14	16	23	180	11 61
Same	SW. qr	14	16	23	180	11 61
Same	SE. qr	17	16	23	180	11 61
Same	NW. qr	17	16	23	80	5 80
Same	E. hf. SE. qr	17	16	23	160	11 61
Same	SW. qr	18	16	23	160	9 68
Same	N. qr	20	16	23	120	8 71
Ad.	S. ½ NE. and E. ½ N. ½ NE	21	16	23	160	11 61
Same	NW. qr	22	16	23	160	9 68
Same	SE. qr	22	16	23	160	11 61
Same	SW. qr	23	16	23	160	9 68
Same	SW. qr	26	16	23	160	9 68
Same	NW. qr	27	16	23	160	9 68
Same	NE. qr	27	16	23	160	11 61
Same	NW. qr	27	16	23	160	11 61
Same	SE qr	27	16	23	160	11 61
Same	SW. qr	28	16	23	160	9 68
Same	NE. qr	28	16	23	160	9 68
Same	SE. qr	24	16	23	160	9 68
Same	NE. qr	24	16	23	160	9 68
Same	NW. qr	24	16	23	160	9 68
Same	SE qr	24	16	23	160	9 68
Same	SW. qr	35	16	23	160	9 68
Same	NW. qr	35	16	23	160	9 68
Same	SW. qr	35	16	23	160	9 68

15 *Petition.*

District court, Miami county.

YELLOW BEAVER, TON RODGERS, TAKONA, or Mitchell, Peter Cloud, and Frank Valley, for themselves, and representing the Wea Indians, of Miami co., in their individual and tribal relations, plaintiffs,
against
THE BOARD OF COUNTY COMMISSIONERS OF Miami county, Thomas Akers, treasurer, aud Daniel Childs, clerk of said county, defendants.

To clerk: Issue a summons in the above case, directed to the sheriff of Miami county, for service; returnable according to law.

Indorsed thereon, "Injunction allowed."

BROWN & COE,
Attorneys for Plaintiffs.

And thereupon an order was granted by the judge of the probate court of said county of Miami and State of Kansas, of which said order the following is a copy, to wit:

16 *Order of injunction.*

District court, Miami county.

YELLOW BEAVER, TOM RODGERS, TACONA, or Mitchell, Peter Cloud, and Frank Valley, for themselves, and representing the Wea Indians of Miami county, Kansas, in their individual and tribal relations, plaintiffs,
against
THE BOARD OF COUNTY COMMISSIONERS OF Miami, Thomas Akers, treasurer, and Daniel Childs, clerk of said county, defendants.

On application of the said plaintiffs, by their attorneys, Brown and Coe, for an injunction, and upon producing their petition duly verified, on consideration whereof it is ordered that an injunction issue in this case against each of said def'ts, as prayed for in said petition, on the pl'ffs giving their undertaking to the said def'ts, to the acceptance of the clerk of the court, in the sum of $3,000.

Done by the probate judge of Miami co., the judge of the district court being absent from the county, this 2d day of May, 1864.

D. B. WILSON,
Probate Judge.

And thereupon the following bond was filed and approved, to wit:

17 Know all men by these presents, that we, Yellow Beaver, Thomas Rodgers, Takosha, or Mitchell, Peter Cloud, and Frank Valley, as principals, and we, Baptiste Peoria and W. D. Hoover, as securities, are held and firmly bound unto the board of county commissioners of Miami county, Thomas Akers, treasurer, and Daniel Childs, clerk of Miami county, in the penal sum of three thousand dollars, lawful money of the United States, to be recovered of our goods and chattels, lands, and tenements.

The consideration of this obligation is such, that whereas the principal obligors have brought a suit in the district court of Miami county against the obligees, to test the legality of the assessment of taxes on the lands of the obligees and other members of the Wea Indians, and have obtained an injunction against the def'ts resting them from selling said lands so for the payment of said taxes. Now, if the said obligors shall pay to the parties injured all damages they may sustain, if it be finally decided that the injunction ought not to have been granted.

Witness our hands at Paola, this 2d day of May, A. D. 1864.

YELLOW BEAVER.
TOM RODGERS.
TAKONA, or MITCHELL.
PETER CLOUD.
FRANK VALLEY.

18 By BROWN & COE, *their Attorneys.*

Witness:
G. W. BROWN.
his
BAPTISTE + PEORIA.
mark.
W. D. HOOVER.

And thereupon upon the said præcipe the following summons was issued, viz:

Summons for district court.

STATE OF KANSAS, *County of Miami, ss:*

The State of Kansas, Miami county, to the sheriff of Miami county, greeting:

You are hereby commanded to notify the board of county commissioners of Miami county, Thomas Akers, treasurer, and Daniel Childs, clerk of said county, that they have been sued by Yellow Beaver, Tom Rodgers, Takona, or Mitchell, Peter Cloud, and Frank Valley, for themselves, and representing the Wea Indians of Miami county in their individual and tribal relations, in the district court, fourth judicial district, State of Kansas, sitting within and for the county of Miami, and they must answer the petition filed against them in the clerk's office of the said court on or before the 2d day of June, A. D. 1864, or such petition will be taken as true, and judgment ren-

dered accordingly. You will make due return of this summons on or before the 13th day of May. A. D. 1864.

19 Witness my hand and the seal of the said county of Miami, this 3d day of May, A. D. 1864.

T. J. BANNISTER, *Clerk.*

Suit brought for to sustain injunction; injunction allowed, and securities filed May 3d, 1864.

T. J. BANNISTER, *Clerk.*

SHERIFF'S OFFICE, MIAMI COUNTY, KANSAS.

Rec'd the within summons the 3d day of May, A. D. 1864, at 4 o'clock p. m., and executed the same this 3d day of May, A. D. 1864, by delivering certified copy to Daniel Childs, clerk of the board of county commissioners, Thomas Akers, treasurer of Miami co., and to Daniel Childs, clerk, county clerk of said county.

W. P. DUTTON,
Sheriff Miami Co.

And thereupon afterwards, to wit, on the 21st day of June, the demurrer of defendant was filed in words and figures following, to wit:

Demurrer.

Fourth district court for Miami co., Kansas.

YELLOW BEAVER *et al.*, pl'ffs,
vs.
BOARD OF COUNTY COMMISSIONERS OF MIAMI County, Kansas, *et al.*, def'ts.

20 The defendants say the demurrer to the petition, because said petition does not state facts sufficient to constitute a cause of action.

W. R. WAGSTAFF,
Att'y for Plaintiff.

And afterwards, to wit, on the 11th day of August, the following amendment to petition was filed, viz:

Amendments to plaintiffs' petition.

In the district court in and for Miami county.

YELLOW BEAVER, TOM RODGERS, TAKONA, or Mitchell, Peter Cloud, and Frank Valley, for themselves, and representing the Wea Indians of Miami county, Kansas, in their individual and tribal relations, pl'ffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Miami Co., Kansas, Thomas Akers, treasurer, and Daniel Childs, clerk of said co.

The plaintiffs ask to amend their petition filed in this action by the following additional allegations to be added to the 1st paragraph of

said petition, that is to say: And the plaintiffs say that the said Wea tribe of Indians, associated with other tribes, as provided in
21 said treaty, have always been, since their settlement upon the lands secured to them by said treaty, and reserved to them by the 2d and 3d articles of said treaty, an independent nation, and as such, have always, and now do, maintain their tribal relations with the United States, and as such have, with the sanction of the United States, preserved their separate and distinct organization as a tribe, and their councils lawfully elected, according to the customs and usages of the tribe, have regulated, and have power to regulate, the local and domestic affairs of the associated nation, and have governed the same by their own laws as an independent people, subject only to the general supervision of the United States, according to the laws and judicial decisions thereof; and said tribe now claim and have, under such supervision, exercised and claimed, and now claim and exercise, their independent condition as aforesaid, and all rights, exemptions, privileges, franchises, customs, purchases which the said nation may of right claim appertaining to property and persons, subject only to the supervisions and laws of the United States as aforesaid. As such independent nation they have power to, and have concluded treaties with the United States, and by them been,
22 and now are, recognized and protected as such independent nation. And the plaintiffs further say, that the lands secured to said tribe and the individuals thereof, in severalty, as is provided in the 2d and 3d articles of said treaty, have been by them duly selected, and now constitute the territory of said tribe, and are occupied by them as such independent nation, and include the lands mentioned in schedule A of this petition, and are situate within the said county of Miami; said schedule contains the names of the persons for whose benefit this action is brought, the description of the several tracts owned and occupied by each person, and the amount of tax assessed upon each tract of land. And the plaintiffs further say, that said Wea tribe, associated as aforesaid, have never by treaty or otherwise, nor have the pl'ffs, and those for whom this action is brought, ceded to the United States nor to the State of Kansas, any rights appertaining to them, except so far as is contained in the said treaty of May 30th, 1854. And the plaintiffs further say, that this action is brought by the advice and consent of each member of said nation and of the owners of the said lands in whose behalf this action is instituted.

BROWN & COE, *Attorneys.*

23 STATE OF KANSAS, *County of Miami, ss:*

Baptiste Peoria, being duly sworn, on oath says, that the facts contained in this above amendment to the pl'ffs' petition, are true.

his
BAPTISTE + PEORIA.
mark.

Subscribed and sworn before me, this 8th day of August, 1864.
T. J. BANNISTER, *Clerk.*

These amendments are filed as part of original petition, by consent, all objections raised to them as to the time of filing, and want of notice thereof; it is also stipulated that the decree heretofore filed shall apply to the petition and amendments in the action, and objections to the time of filing waived.

BROWN & COE, *Pl'ffs' Att'y.*
W. R. WAGSTAFF,
Attorney for Def'ts.

And afterwards, to wit, at the September term of the said court, A. D. 1864, the following action was had, to wit:

And on the 24th day of September, 1864, in the fourth district court, the following order was made, to wit:

24 *Injunction.*

YELLOW BEAVER, pl'ff,
vs.
BOARD OF COUNTY COMMISSIONERS *et al.*, def'ts.

And this day came the parties, by their attorneys, and this cause coming on for hearing, the def't asks leave to withdraw demurrer, and to answer whereup it is excepted to by pl'ffs' attorney.

It is considered by the court that the pl'ffs in this action have leave to amend the petition herein within fifty days from the rising of this term of court, and that def't have to answer within twenty days thereafter, and this cause do stand continued.

S. O. THACHER,
Judge of the Fourth Judicial District.

And afterwards, to wit, on the 25th day of March, A. D. 1865, in the said court, the following order was made, to wit:

YELLOW BEAVER *et al.*, pl'ffs,
vs.
BOARD OF COUNTY COMMISSIONERS, defendants.

On motion, it is ordered that this cause be continued until court in course, and that the defendant have to amend answer within forty days from the close of this term of court, and the plaintiff have
25 leave to reply within twenty days thereafter, and that a copy of answer be sent to Wilson Shannon, attorney and counsellor at law.

Approved.

D. M. VALENTINE, *Judge.*

And afterwards, to wit, on the 8th day of May, 1865, the following answer was filed, to wit:

Answer.

In the district court in and for Miami county, Kansas.

YELLOW BEAVER, TOM RODGERS, TAKONA, or Mitchell, Peter Cloud, and Frank Valley, for themselves, and representing the Wea Indians of Miami county, Kansas, in their individual and tribal relations, pl'ffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS of Miami county, Kansas, Thomas Akers, treasurer, and Daniel Childs, clerk of said county, defendants.

The defendants, for answer to petition, say:

1st. The defendants deny each and every allegation and averment in said petition not herein specially admitted; and for a second cause of defence avers, 1st. That the lands described in said peti-
26 tion are not and were not, at the time of levying said taxes by defendant, held in the tribal capacity of said Indians, but is individual head rights, selected by the respective heads of families of said tribe of Indians, under the second and third articles of the treaty concluded on the 30th day of May, 1854, by the commissioner on the part of the United States and certain delegates of the confederate tribes of Kas-kas-kia, Peoria, Pean, Kaskaw, and Wea Indians, which said selections were approved by the Secretary of the Interior about the 28th day of August, A. D. 1858, and about the first day of November, 1859, patents issued to the reservees from the United States for said lands, subject to the conditions prescribed by the Secretary of the Interior, under the provisions of the 11th section of the act of Congress, approved March, 1859.—U. S. Statutes, vol. 11, page 430.

2d. All the lands in said petition described as belonging to said reservees, and held by patents issued and delivered to them by the U. S., and all of said lands are situated in the county of Miami, in the State of Kansas, and the holders of said patents are resident citizens of said county and State, and transact business therein. The issuance and delivery by the United States to the reservees
27 of patents, vests in such reservees the title in fee simple to the lands in such patents described; and for the purpose of taxation, the said reservees, and the lands by them held respectively are not considered under the laws of the United States, but such lands of such reservees are liable to assessment for taxes under the laws of the State where said lands are situated.

3d. The restrictions mentioned in the 8th article of said treaty, and the conditions prescribed by the Secretary of the Interior, and the provisions of the 11th sec. of the act of Congress, approved March, 1859, (U. S. Statutes, vol. 10, page 430,) are personal, and do not exempt the said described lands from the operations of the State laws.

4th. The 3d articles of said treaty, and the act of Congress made in pursuance thereof, creates the Secretary of the Interior an agent to assist the reservee in making a transfer of his lands, and a conveyance by the reservee without the approval of the Secretary of the Interior conveys the title under the operations of the laws of this State.

W. R. WAGSTAFF,
Attorney for Def'ts.

And afterwards, to wit, on the 29th day of June, A. D. 1865, the following replication was filed, viz:

28 *Replication.*

State of Kansas, Miami county, district court.

YELLOW BEAVER *et al.*, pl'ffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Miami co. *et al.*, def'ts.

And now comes the said plaintiffs, and for replication to the answer of the said defendants, say that they deny so much of the second defence set up in said answer as errors, and claims that plaintiffs are citizens of the State of Kansas; and said pl'ffs further deny so much of said second defence as claims that the head rights or reservations mentioned in the petition are liable to assessment and taxation, under the laws of the State of Kansas.

The said plaintiffs also deny the allegations contained in the 3d and 4th defence set up in said answer, and said pl'ffs having replied, do pray so.

WILSON SHANNON,
Attorney for Pl'ffs.

State of Kansas, Miami county, district court.

YELLOW BEAVER *et al.*, pl'ffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Miami co. *et al.*, defendants.

29 Be it remembered, that on the 29th day of June, A. D. 1865, at a special term of the district court, sitting in and for the said county of Miami, in the State of Kansas, this cause came on to be heard by the court on the issues joined between the parties, and the counsel for the plaintiffs and defendants agreed to the following facts in writing, and signed by the counsel for the said plaintiffs and the said defendants, which agreed state of facts is in the words and figures following, to wit:

State of Kansas, Miami county, district court.

YELLOW BEAVER *et al.*, pl'ffs,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF Miami county *et al.*, defendants.

The counsel for the pl'ffs and defendants agree to the following facts in the case:

1st. That the individuals named as plaintiffs in this case were, at the commencement of this suit, the chiefs and headmen of the Wea tribe of Indians, mentioned as plaintiffs in the petition, and that they resided in the said county of Miami, and that said pl'ffs and those for whom this suit is brought selected their head rights on reservations of land under the said treaty of the 30th of May, A. D. 1854; that their said head rights are situated in the said county of Miami; that
30 the said pl'ffs, as the chiefs and headmen of the said combined tribe of Weas, represent said tribe, and transact the business of said tribe; that they receive funds from the United States for tribal purposes, and disburse the same for the said tribe, and their receipts and acts are recognized as ruled by the authorities of the United States at Washington city; that the government of the United States have an Indian agent for the said combined tribe of Indians, who resides in the town of Paola, in the said county of Miami, and keeps his office therein, and transacts the business of the United States with said tribe, through their chiefs and headmen at his said office; that the tribal organization of said combined tribe of Indians is kept up and maintained in the said county of Miami, where the annuities from the United States are paid out to the said members of said tribe under the supervision of the Indian agent for said tribe; that the head rights of said members of said tribe, selected under said treaty, are situated in the said county of Miami, and the def'ts have assessed the same for taxation, and claim the right to levy taxes on said head rights, and in default of payment, to sell said lands for taxes as in said petition set forth, and that said head
31 rights have been advertised for sale for taxes, as in said petition set forth. It is further agreed that patents issued, is in said petition stated to the said plaintiffs and the members of said tribe residing in the county of Miami, for the head rights of each member, which said patents are in all respects similar to the copy thereto attached and marked "A," except the names of the parties and the description of the lands. That the printed paper hereto attached, marked "B," is a copy of the rules and regulations made by the Secretary of the Interior for the sale of head rights or Indian lands therein mentioned. It is further agreed that the map, marked D, shows correctly the head rights selected by the said Indians belonging to the said combined tribe; and that said lands have been patented to the several members of said tribe according to the provisions of said treaty, and the sales and regulations of the Secretary of the Interior; also the reservations of other

other Indian lands. It is agreed that said map be considered a part of the record in the case, and that the same may be used in the Supreme Court as part of the record by either party; said map may show the lands sold by the members of said tribe by and with
32 the consent of the Secretary of the Interior of the United States. It is further agreed that the lands sold as aforesaid have been sold mostly to white persons. The word head rights, when used in this agreement, means the lands selected by the members of said tribe under the said treaty of 1854, and have been patented as as aforesaid. It is admitted that the lands held by said Indians under said patents, decreed according to the laws of Kansas, under the directions and regulations of the Secretary of the Interior; that guardians are appointed by the probate court of said county for minors, and their lands sold by order of the probate court under the like regulations of the Secretary of the Interior; that the members of said tribe sue and are sued in the various courts in the said county of Miami; that said Indians trade and traffic with the whites, and the whites with them—the same as the whites do with each other; that the tribe exercise no control over the head rights, and do not punish for offences among themselves, and the Indians go to the criminal courts for redress; that eight of the persons for whose use this suit is brought are white men, adopted into the said tribe, and own
33 head rights under the treaty; some of the adopted whites exercise the elective franchise; that highways are laid out over and across said lands under the authority of the laws of Kansas; that farms of the whites are interspersed more or less among these Indians lands; that municipal townships of the county embrace said Indian lands, and have since the organization of the county. The annuities of the United States are not received by the chiefs, but is paid over to each Indian who signs the pay roll. The chiefs only receive those funds that are used and expended for tribal purposes. The said tribe does not enforce the collection of debts among the members of said tribe.

WILSON SHANNON,
Attorney for Plaintiffs.
WAGSTAFF and THACHER,
Attorneys for Defendant.

Rules and regulations to be observed in the execution of conveyance of land which have been or shall be assigned, in severalty, to Indians within the Territory of Kansas, and for which patents shall be issued in conformity with the 11th section of the act of
34 Congress, entitled "An act making appropriations for sundry civil expenses of the government for the year ending on the 30th of June, eighteen hundred and sixty," approved March 3d, 1859.

Individual Indian reserves are divided into two classes, those which are, and those which are not, included within the boundaries of a tribal reservation; the former are inalienable except to Indians

by birth, members of the tribe to which the reserve belongs; the latter are alienable under the following conditions:

1st. The deed or instrument of conveyance must be executed in the presence of two subscribing witnesses, and acknowledged before the agent within the limits of whose agency the reservee resides, and when presented for approval, must be accompanied by the following certificates, viz:

1st. A certificate signed by two of the chiefs of the tribe to which the reservee belongs, setting forth that the grantor is the identical individual to whom the land was originally granted, or in case the original reservee be dead, that the grantor or grantors, as the case may be, are the only heirs surviving of the original reservee; that he, she, or they, as the case may be, are severally of age and competent to manage his, her, or their affairs, and to dispose of his, her, or their property, and that they think it advisable that the land should be sold.

2d. A certificate from the agent for the tribe to which the reserve belongs, that the contents, purport, and effect of the deed of conveyance were explained to, and fully understood by the grantor or grantors in his presence, in gold or silver coin of the United States, and that the conveyance is in every respect free from fraud or deception.

3d. If the original reservee be dead, and the conveyance is executed by fewer than all his or her heirs, then, in addition to the certificates above required, with the necessary changes therein, the conveyance must be accompanied by a properly authenticated copy of judicial proceedings, showing that partition of the lands granted to the original reservee has been made by a court having jurisdiction thereof, and a diagram prepared by a competent surveyor showing the lots into which the original tracts has been divided, and the respective owners of the same.

2d. Lands belonging to an incompetent, if an adult, may be conveyed by a curator or conservator, and if a minor, by a guardian, in which case the conveyance must be accompanied by a certificate of two chiefs of the proper tribe as to the identity and the incompetency of the grantor, and that the sale is advisable; a certificate of the tribe to which the incompetent belongs, that the consideration specified is a fair and just price for the land, and has been paid in his presence to the grantor in gold or silver coin of the United States; and that the conveyance is, in all respects, free from fraud, and a properly authenticated copy of the records, or a court having jurisdiction, showing the appointment of such curator, conservator, or guardian, as the case may be, and a like authenticated copy of judicial proceedings in a court having jurisdiction authorizing such curator, conservator, or guardian to make sale of the lands mentioned in the conveyance.

3d. If the reservee (or in case he may be dead, his heir or heirs) do not reside within the bounds of an Indian agency, the deed of conveyance may be acknowledged before a justice of the peace or other officer having legal jurisdiction, and in lieu of the certificate of the

chiefs and Indian agent in other cases required, must be accompanied by a certificate of the officer taking the acknowledgment, of the facts required, to be certified by the chiefs and agent in cases where the grantor resides within the bounds of an Indian agency, or if
37 such facts shall not be known to the officer, they must be verified by the affidavits of at least two credible persons who are cognizant of these facts, whose veracity must be certified by such officer, and the testimony and all papers pertaining to the conveyance must be properly authenticated under seal; in all other respects the conveyance must conform to the rules above prescribed.

4th. A diagram prepared by a competent surveyor, or an authenticated copy of the official plat of survey indicating the land intended to be alienated; and all former sales by the original reservee, his or her heirs, must be furnished for the use of the Indian office.

5th. No reservee will be allowed to sell more than one-half of the land assigned to him (or her) under treaty stipulations, except in special cases where circumstances, to be determined by the Secretary of the Interior, may seem to require a relaxation of the rule.

6th. No sale or conveyance which does not substantially conform to the foregoing regulations will receive the approval of the department.

DEPARTMENT OF THE INTERIOR,
38 *Office Indian Affairs, May* 27, 1866.

The foregoing rules and regulations for the government of the respective parties in the execution of deeds of conveyance pertaining to the alienation of lands assigned in severalty to Indians within the State of Kansas, are respectfully submitted to the Secretary of the Interior, with a recommendation that the same may be approved.

W. P. DOLE, *Commissioner.*

The above rules and regulations are hereby approved as recommended by the Commissioner of Indian Affairs.

CALEB B. SMITH, *Secretary.*

THE UNITED STATES OF AMERICA:

To all whom these presents come, greeting:

Whereas by the 2d and 3d acts of the treaty concluded on the 30th day of May, A. D. 1854, by the commissioners on the part of the U. S. and certain delegates of the United tribe of Kaskaskia and Peoria, Piankerkaw and Wea Indians, is is agreed that selections of land shall be made for individuals and heads of families of said United tribe. And whereas a return, dated 31st August, 1858, from the Com'r of Ind. Aff's, has been made to the General Land Office, accompanied by Reservation Book A, whereby it appears that on the 28th
39 day of August, 1858, the Secretary of the Interior approved for the following selections: Now know ye that the U. S. of America, in consideration of the premises and pursuant to the provisions of the treaty aforesaid, have given and granted *and granted,*

and by these presents do give and grant, unto the said and his heirs the tracts of land above described, on the condition as prescribed by the Secretary of the Interior, under the provisions of the 11th section of the act of Congress, approved March 3d, 1859, (U. S. statutes, vol. 11, page 430;) that the said tracts shall never be sold or conveyed by the grantor or his heirs without the consent of the Secretary of the Interior for the time being. To have and to hold the said tracts or parcels of land with the appurtenances unto the same and to his heirs and assigns forever, with the condition aforesaid.

(Signed) JAMES BUCHANAN,
By J. B. LENARD, *Secretary.*

Paper marked A.

40 *Injunction.*

YELLOW BEAVER *et al.*, pl'ffs.
vs.
BOARD OF COUNTY COMMISSIONERS *et al.*, defendants.

This cause coming on to be heard by the court on the issues joined between the parties' agreed state of facts, and the argument of counsel having been heard, as well for the said pl'ffs as the said def'ts, the court find the equity of this case for the defendants. Whereupon the court order, adjudge, and decree that the injunction heretofore allowed in the case be, and the same is hereby, dissolved, and the petition of the said plaintiffs is dismissed; and the court order and adjudge that the said def'ts recover of the said pl'ff their costs of suit in this behalf expended, taxed at $, and that in default of payment execution issue therefor.

And the motion the said pl'ff for a new trial on the ground that the judgment and decree of the court is against the law and evidence in the case coming on to be heard, and the court, on consideration thereof, do overrule said motion, to which ruling of the court the counsel for plaintiff excepts, and his bill of exceptions is signed
41 in open court and ordered to be made a part of the record in this case.

(Signed) D. M. VALENTINE,
Judge of the Fourth Judicial District.

True copy of journal entry.

T. J. BANNISTER, *Cl'k.*

There was no other evidence introduced by either party in this case, except the above opened state of facts, whereupon the court, after the arguments of counsel having been heard, as well for the said pl'ffs as the said def'ts, the court did order, adjudge, and decree that the injunction heretofore allowed in this be dissolved, and that the pl'ffs' said petition be dismissed, and that the said defendants recover of the said pl'ffs their costs of suit in this behalf expended, taxed $, and that exception issue therefor.

Whereupon the said plaintiffs moved the court for a new trial on the ground that the judgment and decree of the court was against the law and the evidence in the case, which said motion coming
42 on to be heard was argued by counsel, as well for the pl'ffs as for the def'ts, the court, after full consideration of said motion, overruled the same and allowed the said judgment and decree to stand as the judgment and decree of this court, to which ruling of the court the said plaintiffs, by their counsel, except, and pray that this, their bill of exceptions, be signed by the court and made a part of the record of this case, all of which is done by the court this day of June, A. D. 1865.

D. M. VALENTINE,
Judge of the Fourth Judicial District.

STATE OF KANSAS, *County of Miami, ss:*

I, T. J. Bannister, a deputy clerk of the district court, fourth judicial district, in and for the county of Miami, do hereby certify that the foregoing transcript is a true copy of the record in this cause.

In testimony whereof I have hereunto set my hand and the seal of the said court at my office in Paola, this 15th day of July, A. D. 1865.

F. ROBERTS, *Clerk.*
[SEAL.] By T. J. BANNISTER, *Deputy Clerk.*

43 And heretofore to wit, on Monday, July 24th, A. D. 1865, the supreme court of Kansas met, pursuant to adjournment; present, Hon. Robert Crozier, chief justice, Hon. L. D. Bailey and Hon. Jacob Safford, assocate justices, and Andrew Stark, clerk, when, among other things done, the following appears of record on the journals of said court, to wit:

YELLOW BEAVER *et al.*
vs.
THE BOARD OF COMMISSIONERS of Miami County *et al.*

This cause coming on to be heard, was submitted by Wilson Shannon, esq., attorney for the plaintiffs in error, and by S. O. Thacher, esq., attorney for the defendants in error, and taken under advisement by the court.

Afterwards, to wit, at the said July term of said supreme court, on the 19th day of September, A. D. 1865, were present Hon. Robert Crozier, chief justice, Hon. L. D. Bailey and Hon. Jacob Safford, associate justices, and Andrew Stark, clerk, when, among other
44 things done, the following appears of record on the journals of said court, to wit:

YELLOW BEAVER *et al.*
vs.
THE BOARD OF COMMISSIONERS of Miami County *et al.*

This cause came on to be heard upon a transcript from the record

of the district court sitting in and for Miami county, and was argued by counsel and considered by the court.

Whereupon it is ordered by the court here that the judgment of said district court of Miami county be, and the same is hereby, affirmed; and it is further considered and adjudged that the said plaintiffs in error pay the costs of this court, and that execution issue therefor. And now come the said plaintiffs in error, by their attorney, Wilson Shannon, esq., and except the judgment and orders made herein, and and move the court that their exceptions may be entered of record, which is done.

And afterwards, to wit, on the 20th day of May, A. D. 1866, a writ of error and copy was filed in the office of the clerk of said supreme court of Kansas, which is in words and figures following, to wit:

45 *Writ of error.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the hon. the judges of the supreme court of the State of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between Yellow Beaver, Tom Rogers, Zakona or Mitchell, Peter Cloud, and Frank Valley, for themselves, and representing the Wea Indians of Miami county, Kansas, in their individual and tribal relations, plaintiffs, and the board of commissioners of Miami county, Kansas, Thomas Akers, treasurer, and Daniel Childs, clerk of said county, defendants, wherein was drawn in question the validity of a statute of the said State of Kansas, and authority exercised under the same, on the ground of its being repugnant to the treaties and laws of the United States, and the decision was in favor of such, its validity, and the authority exercised under the same, and wherein was also drawn in question the
46 construction of a treaty and statute of the United States, and the decision was against the right, privilege, and exemption specifically set up and claimed under such treaty and statute; a manifest error hath happened to the great damage of the said Yellow Beaver, Tom Rogers, Zakona or Mitchell, Peter Cloud, and Frank Valley, who sue for themselves and others aforesaid, as by their complaint appears; we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and procedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

47 Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States of America, the ninth day of April, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] A. S. THOMAS.

Clerk of the Circuit Court of the United States of America, for the ninth circuit for the District of Kansas.

48 Filed May 20, A. D. 1866.

ANDREW STARK, *Clerk S. C.*

49 And afterwards, to wit, on the 31st day of May, A. D. 1866, a bond was filed in the clerk's office of the supreme court of Kansas, which said bond is in words and figures following, to wit:

SUPREME COURT OF THE UNITED STATES, YELLOW Beaver, Tom Boyer, Zakona, or Mitchell, Peter Cloud, and Frank Valley, for themselves, and representing the Wea Indians of Miami county, Kansas, in their individual and tribal relations, plaintiffs,

vs.

THE BOARD OF COMMISSIONERS OF MIAMI County, Kansas, Thomas Akers, treasurer, and Daniel Childs, clerk of said county, defendants in error.

Know all men by these presents, that we Batise Peoria, are held and firmly bound unto the above named board of commissioners of Miami county, Kansas, Thomas Akers, treasurer, and Daniel Childs, clerk of said county, in the sum of six hundred dollars, to be paid to the said board of commissioners of Miami county, Kansas, Thomas Akers, treasurer, and Daniel Childs, clerk of said county,

50 and their successors in office, to which payment, well and truly to be made, we bind surselves and each of us, jointly and severally, and our and each of our heirs and executors and administrators, firmly by these presents.

Sealed with our seals and dated this 23d day of May, A. D. 1866.

Whereas the above named Yellow Beaver, Tom Boyer, Zacona or Mitchell, Peter Cloud, and Frank Valley, for themselves, and representing the Wea Indians of Miami county, Kansas, in their individual and tribal relations, have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Kansas:

Now, therefore, the condition of this obligation is such that if the above-named Yellow Beaver, Tom Boyer, Zakona or Mitchell, Peter Cloud, and Frank Valley, for themselves, and representing the Wea Indians of Miami county, Kansas, shall prosecute their said writ of error to effect, and answer all costs if they shall fail to make good

their plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

[SEAL.] BATISTE his + mark PEORIA.

51 Sealed and delivered in the presence of—
ROBERT CROZIER.
J. L. WEAVER.

Which said bond is indorsed as follows, to wit:

Yellow Beaver, *et al. vs.* The Board of Commissioners of Miami county *et al.* Bond.

The foregoing bond with the surety thereto are sufficient and are approved by me.

May 23d, 1866.

ROBT. CROZIER,
Chief Justice Supreme Court, Kansas.

And afterwards, to wit, June 5th, A. D. 1866, was filed the following citation, to wit:

UNITED STATES OF AMERICA, *ss:*

To the board of county commissioners of the county of Miami, in the State of Kansas, Thomas Akers, treasurer, and Daniel Childs, clerk of said county:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washing-
52 ton on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein Yellow Beaver, Tom Rogers, Takona or Mitchell, Peter Cloud, and Frank Valley, for themselves, and representing the Wea Indians of Miami county, Kansas, in their individual and tribal relations, are plaintiffs, and you are defendants in error, to show cause if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert Crozier, chief justice of the supreme court of the State of Kansas, this 23d day of May, in the year of our Lord, 1866.

[SEAL.] ROBERT CROZIER,
Chief Justice Sup. Court, Kansas.

Which said citation is indorsed in words and figures following, to wit:

I hereby accept service of the within writ, June 1st, 1866.
Laurence, Kansas.

W. R. WAGSTAFF,
One of the Attorneys for Defendants in Error.

STATE OF KANSAS, *County of Douglas, ss:*

53 I, James S. Emery, of lawful age, being duly sworn, say, that on the first day of June, A. D. 1866, I exhibited to Solon

O. Thacher, one of the attorneys of record of the defendants in error, this writ, and delivered to him a true copy of the same.

J. S. EMERY.

Sworn to and subscribed before me, this 2d day of June, A. D. 1866.

S. A. STONEBRAKER,
Clerk of the District Court of Douglas County, Kansas.
By A. J. REID, *Deputy*.

Yellow Beaver, *et al. vs.* The Board of County Commissioners of Miami County *et al.* Citation.

Filed June 5th, A. D. 1866.

ANDREW STARK, *Clerk.*

STATE OF KANSAS, *Supreme Court, ss*:

I, Andrew Stark, clerk of the supreme court of Kansas, do hereby certify that the foregoing is a correct copy and transcript of the papers on file and proceedings had in the supreme court of Kansas, in a cause wherein Yellow Beaver *et al.* were plaintiffs in error, and the board of county commissioners of Miami county *et al.* were defendants in error, as the same appear of record in my office.

In testimony whereof I have hereto set my hand and affixed
54 the seal of said supreme court, at my office in the city of Topeka, and State of Kansas, this 9th day of November, A. D. 1866.

[SEAL.]

ANDREW STARK,
Clerk Supreme Court of Kansas.

55 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the board of county commissioners of the county of Miami, in the State of Kansas, Thomas Akers, treasurer, and Daniel Childs, clerk of said county:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein Yellow Beaver, dead, Tom Rogers, Takona or Mitchell, dead, Peter Cloud, and Frank Valley, for themselves, and representing the Wea Indians of Miami county, Kansas, in their individual and tribal relations, are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert Crozier, chief justice of the su-

preme court of the State of Kansas, this 23d day of May, in the year of our Lord, 1866.

[SEAL.]

ROBT. CROZIER,
Chief Justice Sup. Court, Kansas.

56 I hereby accept service of the within writ, June 1st, 1866. Laurence, Kansas.

W. R. WAGSTAFF,
One of the Attorneys for Defendants in Error.

STATE OF KANSAS, *County of Douglas, ss:*

I, James S. Emery, of lawful age, being duly sworn, says, on the first day of June, A. D. 1866, he exhibited to Solon O. Thacher, one of the attorneys of record of the defendants in error, this writ, and delivered to him a true copy of the same.

J. S. EMERY.

Subscribed and sworn to before me, this 2d day of June, 1866.

S. A. STONEBRAKER,
Clerk of the District Court of Douglas County, Kansas.
By A. J. REID, *Deputy.*

Filed June 5, A. D. 1865.

A. STARK, *Clerk.*

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